IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 104 OF 2006

IN

CONTEMPT PETITION NO. 208 OF 2006

Mukund Iron & Staff Association
Co-op Housing Soc. Ltd. .. Petitioner

versus

The State of Maharashtra & ors. .. Respondents

...

Mr.Sagar Joshi for the petitioner.

Mr.M.M. Aliya N. Pathan for BMC.

Mr.Deepak Chitnis for respondent no.4.

Mr.A.R. Patil AGP for the state.

CORAM : D.G. KARNIK, J

DATED : 24th November 2006

P.C.:

1. Heard learned counsel for the parties.

2. This Civil application is taken out for restoration of the contempt petition which was dismissed in default by an order dated 11th August 2006

3. Learned AGP appearing for respondent nos.1 and 2 stated that the respondents would submit to the order of the Court. However, learned counsel for respondent nos.3,4, and 5 strongly opposed the restoration. They submitted that the contempt petition has been dismissed not for default but on merits. They invited my attention to the observations made in paragraph no.2 of the order dated 11th August 2006 wherein the Court has observed that there is no allegation of contempt against respondent nos.1 and 2 and therefore court cannot proceed against respondent nos.1 and 2. It appears that is a casual observation. In any event it was an observation regarding respondent nos.1 and 2 whose counsel has not objected to the restoration. In the very order the Court has further observed that as none appeared for the petitioner, petition is dismissed for non prosecution. It is therefore required to be seen whether there was sufficient cause for absence of the petitioner on 11th August 2006..

4. In paragraph no.3 of the application, the

petitioner has stated that, that the advocate missed the matter on board while seeing the board and therefore he was absent. This averment is not denied in the affidavits in reply. In the circumstances, civil application deserves to be allowed subject to payment of costs. Accordingly civil application is allowed in terms of prayer clause (a) subject to the petitioner paying costs of Rs.2,000/- to the respondent nos.3 and 5 together and costs of Rs.2,000/- to respondent no.4.

5. Costs shall be paid within two weeks failing which this civil application shall stand dismissed.

(D.G. KARNIK, J)